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GREENBERG TRAURIG, LLP

Valerie W. Ho (SBN 200505) (hov@gtlaw.com)

Jeffrey F. Yee (SBN 193123) (yeej@gtlaw.com)

1840 Century Park East, Suite 1900

Los Angeles, California 90067

Telephone: (310) 586-7700

Facsimile: (310) 586-7800

Attorneys for Plaintiff
Tech-4-Kids, Inc.

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

2012 AUG 17 PM 3:44
CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES
BY: _____

FILED

TECH-4-KIDS, INC., a Canadian
corporation,

Plaintiff,

vs.

SPORT DIMENSION, INC., a California
Corporation,

Defendant.

CASE NO. 2:12-CV-06769-PA-AJW

Honorable Percy Anderson

**PLAINTIFF TECH-4-KIDS, INC.'S
FIRST AMENDED COMPLAINT**

[DEMAND FOR JURY TRIAL]

Complaint filed: December 6, 2011
Trial: TBD

1 **FIRST AMENDED COMPLAINT**

2 Plaintiff Tech-4-Kids, Inc. ("Plaintiff"), by its undersigned counsel, hereby brings
3 the following First Amended Complaint ("FAC") against Defendant Sport Dimension,
4 Inc. ("Defendant") and avers as follows:

5 **INTRODUCTION**

6 1. This is an action based on Defendant's blatant, unlawful, and malicious
7 misappropriation of Plaintiff's valuable proprietary and confidential information.
8 Defendant pretended to be a friendly potential distributor for Plaintiff's snow bikes in
9 order to extract Plaintiff's proprietary and confidential information. Defendant used this
10 ill-gotten proprietary and/or confidential information to illegally imitate Plaintiff's
11 pioneering snow bikes and sell them to Plaintiff's customers and prospective customers,
12 thereby wrongfully interfering with Plaintiff's commercial relationships.

13 **THE PARTIES**

14 2. Plaintiff Tech-4-Kids, Inc. is a corporation organized under the laws of the
15 Province of Ontario, Canada, having its principal place of business at 1200 Aerowood
16 Drive, Unit 28, Mississauga, Ontario, Canada L4W 2S7.

17 3. Upon information and belief, Defendant Sport Dimension, Inc. is a
18 corporation organized under the laws of the State of California, having its principal place
19 of business at 966 Sandhill Avenue, Carson, California 90746.

20 **JURISDICTION AND VENUE**

21 4. This Court has jurisdiction of the subject matter of this action under 28
22 U.S.C. § 1332 in that the matter in controversy exceeds the sum or value of \$75,000,
23 exclusive of interest and costs, and is between a citizen of a foreign state and a citizen of
24 the State of California.

25 5. This Court has personal jurisdiction over Defendant because, on information
26 and belief, Defendant resides in this judicial district, regularly transacts business in this
27 judicial district, derives revenue from goods sold and used in this judicial district, and
28 committed acts complained of herein in this judicial district.

1 Plaintiff's general and special wholesale pricing, distributor profit margin, existing and
2 prospective customers, the design of Plaintiff's new snow bike product under
3 development at the time, as well as a "cost sheet." Plaintiff expressly advised Defendant
4 that the information was being provided on a confidential basis. In addition, under the
5 circumstances, there was an implied understanding that the information provided by
6 Plaintiff to Defendant during the course of their negotiations regarding Defendant's
7 distribution of Plaintiff's snow bike products would be kept confidential.

8 11. On or about March 17, 2009, Rios accepted the negotiated pricing and other
9 terms provided by Pedersen, and requested samples of Plaintiff's snow bikes, including
10 the one that was under development at the time. Relying on Rios' representations and
11 believing that the parties had reached a distribution arrangement, Plaintiff provided
12 Defendant with samples of its existing snow bikes and mockups of the new snow bike
13 that was under development.

14 12. One of the terms agreed on by the parties was that Defendant would not
15 market the snow bike products to certain retailers in the United States, including Costco
16 Wholesale Corp. ("Costco U.S."). Plaintiff had advised Defendant that Plaintiff had a
17 pre-existing relationship with Costco Canada and intended to market its products directly
18 to Costco U.S.

19 13. After obtaining the Confidential Information and receiving snow bike
20 samples from Plaintiff, Defendant informed Plaintiff that there was not a single retail
21 buyer in the United States for Plaintiff's snow bikes.

22 14. Unbeknownst to Plaintiff, Defendant secretly developed and manufactured a
23 remarkably similar snow bike product, despite representing to Plaintiff that not a single
24 retailer in the United States was interested in such a product. Upon information and
25 belief, Defendant used the confidential design information provided by Plaintiff to design
26 and develop its competing snow bike product.

27 15. Worse, upon information and belief, in 2010 to 2011, Defendant offered its
28 competing snow bike product to Plaintiff's customer, Costco U.S., whom Defendant had

1 previously agreed not to approach when the parties were negotiating and finalizing the
2 terms of their distribution arrangement.

3 16. Plaintiff had an existing relationship with Costco Canada and Costco U.S.
4 In 2009 to 2010, Costco U.S. carried Plaintiff's popular snow bike product. The product
5 was so successful that it quickly sold out, causing Costco U.S. to order additional units
6 from Plaintiff for that season.

7 17. However, in 2010 to 2011, Costco U.S. decided to stop carrying Plaintiff's
8 snow bike products, and instead, began selling Defendant's snow bike. Upon
9 information and belief, Defendant used the confidential pricing and margin information
10 provided by Plaintiff to obtain an unfair commercial advantage and to undercut Plaintiff's
11 pricing, thereby enticing Costco U.S. to carry Defendant's product instead.

12 18. As a result of Defendant's fraudulent conduct and misappropriation of
13 Plaintiff's trade secrets, Plaintiff lost in excess of \$1.5 million in sales.

14 **FIRST CLAIM FOR RELIEF**

15 **(Fraud and Deceit)**

16 19. Plaintiff repeats and re-alleges each and every allegation contained in
17 Paragraphs 1 to 18 of this FAC as if fully set forth herein.

18 20. In March 2009, Rios represented to Pedersen orally and/or in writing that (1)
19 Defendant was interested in a partnership with Plaintiff for the sale and distribution of
20 Plaintiff's snow bike products in the United States; (2) Defendant would act as Plaintiff's
21 distributor and would promote and market Plaintiff's snow bike products to retailers in
22 the United States; and (3) Defendant would not market the products to an agreed list of
23 retailers, including Costco U.S., whom Defendant understood would be approached
24 directly by Plaintiff (the "Representations").

25 21. Upon information and belief, the Representations were false at the time they
26 were made. Defendant had no intention of acting as Plaintiff's distributor and had no
27 intention of promoting Plaintiff's products in the United States. The Representations
28

1 were made with the intent of inducing Plaintiff to disclose Confidential Information
2 regarding its snow bike products to Defendant.

3 22. Upon information and belief, Defendant knew the Representations were
4 false at the time they were made, or exhibited an utter and reckless disregard for whether
5 the statements were true.

6 23. Defendant also intentionally failed to disclose that it was planning,
7 designing and/or developing a competing snow bike product.

8 24. The Representations and omissions were material. Had Plaintiff known that
9 Defendant had no intention of promoting Plaintiff's products, and in fact had plans to
10 develop a competing product, Plaintiff never would have negotiated a distribution
11 arrangement with Defendant or provided Defendant with Plaintiff's Confidential
12 Information.

13 24. Plaintiff reasonably and justifiably relied on Defendants' Representations,
14 and as a result, provided Defendant with Plaintiff's Confidential Information.

15 25. As a direct and proximate result of Defendant's fraud, Plaintiff has been
16 damaged in excess of \$1.5 million, the exact amount of which shall be proven at trial.

17 26. In addition, Plaintiff is entitled to an award of punitive or exemplary
18 damages against Defendant, because in committing the misdeeds described above,
19 Defendant acted in conscious disregard of the rights of Plaintiff, with the intent to injure
20 and defraud Plaintiff, and otherwise acted with malice, fraud, or oppression in the manner
21 and fashion described herein.

22 **SECOND CLAIM FOR RELIEF**

23 **(Interference With Prospective Economic Advantage)**

24 27. Plaintiff repeats and re-alleges each and every allegation contained in
25 Paragraphs 1 to 18 of this FAC as if fully set forth herein.

26 28. Plaintiff had an economic relationship with Costco Canada and Costco U.S.
27 which would have resulted in future economic benefits to Plaintiff. In fact, in 2009-
28 2010, Costco U.S. (as well as Costco Canada) was carrying Plaintiff's snow bike

1 products, and ordered additional units when those products sold out that season. Costco
2 U.S. had informed Plaintiff that the snow bike products were extremely successful.
3 Plaintiff also received favorable feedback at sales presentation meetings with Costco. As
4 a result, Plaintiff reasonably expected to sell additional products to Costco in 2010-2011.

5 29. Defendant knew or should have known of Plaintiff's relationship with
6 Costco Canada and Costco U.S. In fact, Defendant had agreed that it would not approach
7 the Costco entities for business relating to snow bikes with the understanding that
8 Plaintiff would be marketing to the Costco entities directly.

9 30. Defendant intended to disrupt, and succeeded in disrupting, Plaintiff's actual
10 and potential relationship with Costco U.S. by engaging in the wrongful acts described
11 herein, including using Plaintiff's Confidential Information to design and develop a
12 competing snow bike product, and further using Plaintiff's Confidential Information to
13 uncut Plaintiff's pricing.

14 31. Defendant's conduct was wrongful because, without limitation, it breached
15 its agreement not to approach Costco, it engaged in a fraudulent scheme to extract
16 information about Plaintiff's snow bike products, and it misappropriated Plaintiff's
17 Confidential Information.

18 32. As a result of Plaintiff's wrongful conduct, in 2011, Costco declined to
19 purchase Plaintiff's snow bikes, electing instead to carry Defendant's competing snow
20 bike product.

21 33. As a direct and proximate cause of Plaintiff's wrongful conduct, Plaintiff
22 has been damaged in excess of \$1.5 million, the exact amount of which shall be proven at
23 trial.

24 34. In addition, Plaintiff is entitled to an award of punitive or exemplary
25 damages against Defendant, because in committing the misdeeds described above,
26 Defendant acted in conscious disregard of the rights of Plaintiff, with the intent to injure
27 and defraud Plaintiff, and otherwise acted with malice, fraud, or oppression in the manner
28 and fashion described herein.

THIRD CLAIM FOR RELIEF

(Misappropriation of Trade Secrets by Defendant)

35. Plaintiff repeats and re-alleges each and every allegation contained in Paragraphs 1 to 18 of this FAC as if fully set forth herein.

36. Plaintiff's Confidential Information derives independent economic value, actual or potential, from not being generally known to the public, and not being readily ascertainable by proper means by persons who can obtain economic value from its disclosure or use, including Plaintiff's competitors.

37. Plaintiff used efforts that were reasonable under the circumstances to maintain the confidentiality of the Confidential Information, including asking Defendant to maintain the confidentiality of the information provided.

38. In violation of California's Uniform Trade Secrets Act, California Civil Code § 3426, *et seq.*, Defendant misappropriated Plaintiff's Confidential Information by using the Confidential Information without Plaintiff's express or implied consent even though Defendant knew or had reason to know that the Confidential Information was acquired under circumstances giving rise to a duty to maintain its secrecy or to limit its use.

39. As a direct and proximate cause of Defendant's wrongful acts, Plaintiff has been damaged in excess of \$1.5 million, the exact amount of which shall be proven at trial. In addition, Defendant has been unjustly enriched by the misappropriation.

40. Upon information and belief, Defendant will continue to use the misappropriated Confidential Information unless enjoined by this Court.

41. Plaintiff has been, and will continue to be, damaged and irreparably harmed by the actions of Defendant. Thus, Plaintiff is entitled to preliminary and permanent injunctive relief, damages in an amount no less than \$1.5 million, costs, interest, and attorneys' fees. Defendant's conduct also was willful and malicious, and pursuant to California Civil Code § 3426.3, Plaintiff is entitled to recover exemplary damages of at least \$3 million.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

A. That judgment be entered in favor of Plaintiff.

B. That a preliminary, and thereafter, a permanent injunction be entered enjoining Defendant, its officers, directors, agents, servants, employees, representatives, attorneys, related companies, affiliates, websites, successors, assigns, and all others in active concert or participation with them from disclosing or using Plaintiff's Confidential Information.

C. Awarding Plaintiff actual damages in an amount no less than \$1,500,000;

D. Awarding Plaintiff punitive and/or exemplary damages in an amount no less than \$3,000,000;

E. Awarding Plaintiff reasonable attorneys' fees;

F. Awarding Plaintiff pre-judgment and post-judgment interest on its damages together with all costs and expenses;

G. Granting Plaintiff any other and further relief as the Court may deem just and proper.

DATED: August 17, 2012

GREENBERG TRAURIG, LLP

By: 

Valerie W. Ho

Jeffrey F. Yee

Attorneys for Plaintiff Tech-4-Kids, Inc.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b), Fed. R. Civ. P., Plaintiffs demand a trial by jury of any issue triable of right by a jury.

DATED: August 17, 2012

GREENBERG TRAURIG, LLP

By: 

Valerie W. Ho

Jeffrey F. Yee

Attorneys for Plaintiff Tech-4-Kids, Inc.

EXHIBIT A

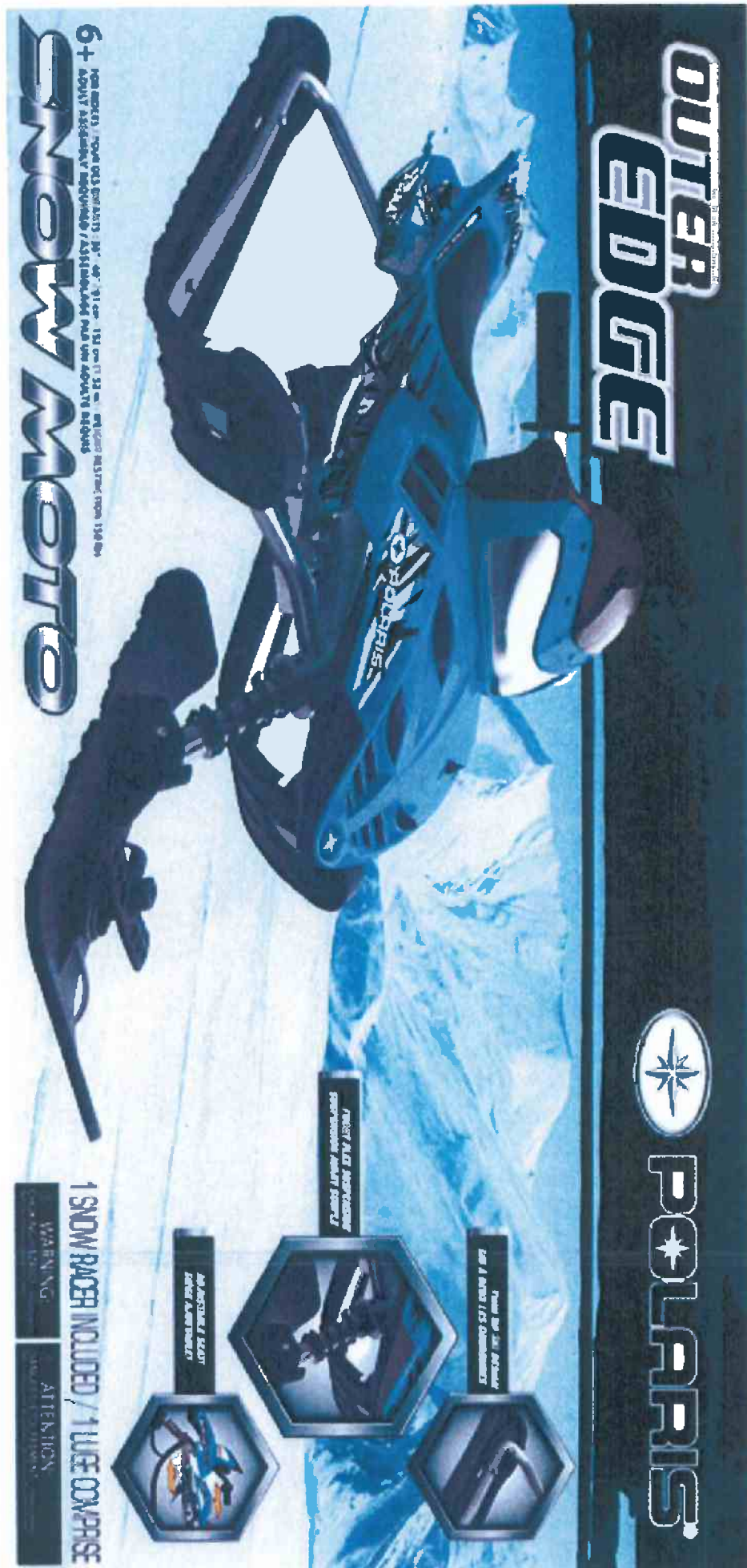






EXHIBIT B



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ABOUT SPORT DIMENSION:

SPORT DIMENSION INC. focuses on the sales, manufacturing and distribution of water sports related products with roots dating back to the early 1970's. Our management teams, along with our many associates, have worked with and for the pioneers of surfing and scuba diving, providing our company with a solid foundation. Each member of our team has true market knowledge and core experience, allowing us to provide exceptional understanding within every category. Our wealth of knowledge and experience allows us to design and produce innovative, quality products with our focus on wetsuits, aquatics, personal flotation vests, body boards, towables and inflatables. Based in Carson, CA, SPORT DIMENSION's headquarters houses all facets of its business operations with the exception of factory manufacturing which is accomplished overseas in company supervised facilities.

SPORT DIMENSION INC designs, develops and distributes products that are suited to various levels of sales and distribution. From the top level specialty pro shops, sporting goods retailers, entertainment industry and water parks, we can service any sector providing a variety of water sports products.

Our mission statement is to be at the forefront of the water sports industry by pushing the limits of design and performance as well as striving to provide exceptional products year after year, while supplying superior customer service.

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PROOF OF SERVICE**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

I am employed in the aforesaid county, State of California; I am over the age of 18 years and not a party to the within action; my business address is 1840 Century Park East, Suite 1900, Los Angeles, California 90067.

On August 17, 2012, I served the document described as **PLAINTIFF TECH-4-KIDS, INC.'S FIRST AMENDED COMPLAINT [DEMAND FOR JURY TRIAL]** on the interested parties in this action by placing the true copy thereof, enclosed in a sealed envelope, postage prepaid, addressed as follows:

Michael H. Selter
Manelli & Selter PLLC
2000 M Street NW Suite 700
Washington, DC 20036

Thomas M. Dunlap
Dunlap Grubb and Weaver PC
199 Liberty St SW
Leesburg, VA 20175

☐ **(BY MAIL)**

☐ I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.

☐ I am readily familiar with the business practice of my place of employment in respect to the collection and processing of correspondence, pleadings and notices for mailing with United States Postal Service. The foregoing sealed envelope was placed for collection and mailing this date consistent with the ordinary business practice of my place of employment, so that it will be picked up this date with postage thereon fully prepaid at Los Angeles, California, in the ordinary course of such business.

☒ **(BY E-MAIL)**

On August 17, 2012, I transmitted the foregoing document(s) by E-mail to the parties at their respective e-mail addresses as indicated above. The document was served electronically and the transmission was reported complete and without error.

☐ **(BY PERSONAL SERVICE)**

I caused such envelope to be delivered by hand to the offices of the addressees as indicated above. Executed on August 17, 2012, at Los Angeles, California.

☒ **(BY FEDERAL EXPRESS)** I am readily familiar with the business practice of my place of employment in respect to the collection and processing of correspondence, pleadings and notices for delivery by Federal Express. Under the practice it would be deposited with Federal Express on that same day with postage thereon fully prepared at Los Angeles, California in the ordinary course of

PROOF OF SERVICE

1 business. I am aware that on motion of the party served, service is presumed
2 invalid if delivery by Federal Express is more than one day after date of deposit
3 with Federal Express.

4 ☐ (STATE) I declare under penalty of perjury under the laws of the State of
5 California that the foregoing is true and correct.

6 ☒ (FEDERAL) I declare under penalty of perjury that the foregoing is true and
7 correct, and that I am employed at the office of a member of the bar of this Court
8 at whose direction the service was made.

9 Executed on August 17, 2012, at Los Angeles, California.

10 
11 Monica A. Solorzano